

Agenda

Item #4



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members
From: Jonathan Wayne, Executive Director
Date: November 22, 2010
Re: Request by Stop Handgun Violence Action Fund PAC for Waiver of Late-Filing Penalty

Stop Handgun Violence Action Fund is a PAC registered with the Commission. On Friday, October 22, 2010, it purchased an advertisement in the Forecaster newspaper for \$567 in opposition to Gerald Davis, a candidate for the Maine Senate, District 11. Because the expenditure was for a paid communication to voters opposing a clearly identified candidate, the PAC was required to file an independent expenditure report by Saturday, October 23. If the report had been filed on Saturday, October 23, the Commission employees who were working that day would have authorized Mr. Davis to spend an additional \$567 in matching funds. In general, independent expenditure reports must be filed on paper (by fax, mail, or hand-delivery), because the reporting form requires a notarized statement that the expenditure was made independently of the candidate.

Instead, acting in good faith, the PAC filed the wrong report. In his November 4 letter, the PAC's treasurer, William S. Harwood, explains that the PAC has never made an independent expenditure previously. On Friday, October 22, he filed a 24-Hour Report electronically on the Commission's website, believing it to be the correct report.

The mistake is understandable.¹ PACs are required to file a 24-Hour Report for any expenditure over \$500 made in the last 13 days before an election – regardless whether it is a communication to voters or relates to a particular candidate. Because the filing deadline is 24 hours after making the expenditure, it can easily be confused with the independent expenditure report.

If a PAC spends more than \$500 for a paid communication to voters supporting or opposing a candidate, the PAC may be required to file both an independent expenditure report and the 24-Hour Report. To avoid duplication, the Commission has a rule stating that "A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report." (Chapter 1, Section 10(3)(D)) Nevertheless, the independent expenditure report is important because it contains affects matching funds paid to Maine Clean Election Act candidates and because it contains a sworn statement that the expenditures were made independently of the candidates.

¹ Two other committees made similar mistakes and are on the agenda: Robust Economy Maine and the Sagadahoc County Democratic Committee.

On Sunday, October 24, PAC/Party/Lobbyist Registrar Cindy Sullivan was in the office working. She noticed the Stop Handgun Violence Action Fund had filed a 24-Hour Report that appeared to be for a communication to voters. She left a voicemail for Mr. Harwood at his office, inquiring whether the PAC might also be required to file an independent expenditure report.

On Monday, October 25, Mr. Harwood's assistant telephoned the Commission's office. The PAC filed the independent expenditure report on October 25 – two days late. The preliminary penalty is \$11.34.

On October 25, the Commission received a number of large independent expenditure reports in support of Gerald Davis' opponent, Richard Woodbury. Mr. Davis qualified to receive the maximum matching funds on October 25. So, the late filing of the \$567 independent expenditure report only delayed the payment of \$567 in matching funds to Gerald Davis for two days.

Staff Recommendation

The PAC requests a waiver of the \$11.34 penalty because of the treasurer's lack of experience in filing these reports, the lateness occurred over a weekend, and because of the understandable confusion between the two reporting requirements. The Commission staff is sympathetic and we believe that the PAC acted in complete good faith. You have the discretion to grant the waiver request under the statute 21-A M.R.S.A. § 1020-A, if you would like.

Nevertheless, the staff recommends against a waiver of the penalty because the late report delayed the authorization to Gerald Davis to spend \$567 in matching funds and because the Commission has previously used its enforcement procedures to encourage the timely filing of independent expenditure reports.

Preventing Wrong Reports in the Future

Three PACs and party committees (Stop Handgun Violence Action Fund, Sagadahoc County Democratic Committee, and Robust Economy PAC) filed 24-Hour Reports, rather than independent expenditure reports. In spite of the potential for confusion, 27 PACs and five party committees filed the independent expenditure report correctly in the last 13 days before the election. Nevertheless, the Commission staff will reconsider in 2012 how to amend its website and/or get better e-mail or written advice to PACs and party committees so that they know filing a 24-Hour Report does not substitute for an independent expenditure report.

Thank you for your consideration of this memorandum.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

October 25, 2010

By Regular and Certified Mail, Return Receipt Requested

William Harwood
Stop Handgun Violence Action Fund
PO Box 7734
Portland, Maine 04112

Re: Penalty for late filing of Independent Expenditure

Dear Mr. Harwood:

The Stop Handgun Violence Action Fund filed an Independent Expenditure due October 23, 2010 two days late on October 25, 2010. Under the Commission's statutes, the late filing of a report by a political action committee triggers an enforcement process. (21-A M.R.S.A. § 1020-A(4-A)) The Commission staff has calculated the amount of a preliminary penalty for the late filing, based on the amount of financial activity in the report, the number of calendar days the report was late, and the PAC's previous violations. The preliminary penalty for the late filing is \$11.34. (Please see attached penalty matrix for the calculation.)

The PAC may pay the penalty or request that the members of the Commission waive the penalty in whole or in part. Any request for a waiver must be made within 14 calendar days of your receipt of this notice (or attempted delivery by the U.S. Post Office). The request must be notarized and contain a full explanation of the reasons the committee filed late. Upon receiving your request, the Commission staff will schedule your request for an upcoming Commission meeting.

Under 21-A M.R.S.A. § 1062-A(2), the Commission may waive the penalty if it determines that the report was late due to 'mitigating circumstances,' which are defined as: (1) a valid emergency of the committee treasurer; (2) an error made by the Commission staff; or (3) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that the committee made a bona fide effort to file the report on time, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure.

The Commission requests that the committee pay the preliminary penalty within two weeks, if it does not intend to request a waiver. Please call me at 287-6221 if you have any questions.

Sincerely,



Cindy Sullivan, PAC Registrar

Enc.: PAC penalty matrix

**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
PENALTY MATRIX FOR LATE IDEPENDENT EXPENDITURE FILING**

**BASIS FOR PENALTIES
21-A M.R.S.A. Section 1062-A**

Committee Name:	Stop Handgun Violence Action Fund	Report Title:	Independent Expenditure
		Due Date:	October 23, 2010
Previous Violation(s):	0 this quarter	Filed Date:	October 25, 2010

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%
For the second violation, 3%
For the third and each subsequent violation, 5%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

Penalty Example:		Your Penalty is calculated as follows:	
The treasurer files the IE report two (2) days late. The organization has not had any previous late violations this biennium. The IE reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is			
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	Contributions / Expenditures:	\$567.00
		X	1%
			\$5.67
X .01	Percent prescribed for first violation		
\$25.00	One percent of total contributions	Number of days late:	2
		X	
X 2	Number of calendar days late		
		Total penalty accrued:	\$11.34
\$50.00	Total Penalty		

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

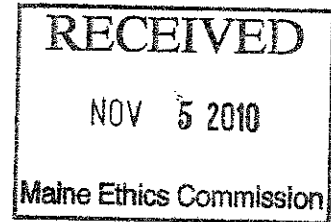
A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES

21-A M.R.S.A. Section 1062-A(3)

\$10,000 for 11-Day Pre Election reports, 42-Day Post-Election reports, 24-Hour reports
and for Quarterly reports

*William S. Harwood
66 East Elm Street
Yarmouth ME 04096*



November 4, 2010

Cindy Sullivan, PAC Registrar
State of Maine
Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta ME 04333-0135

Re: Stop Handgun Violence Action Fund/Penalty for late filing of Independent
Expenditure

Dear Ms. Sullivan:

I am in receipt of your letter of October 25, 2010 informing me that the Commission has assessed a preliminary penalty of \$11.34 for the late filing of an Independent Expenditure Report by Stop Handgun Violence Action Fund. For all the following reasons, I hereby request a waiver of the penalty.

Stop Handgun Violence Action Fund is a Political Action Committee that has not been very active in recent years. Prior to October 22nd, SHVAF had never made an independent expenditure or any expenditure within ten days of an election. As a result, I was generally unfamiliar with the details of an Independent Expenditure Report or a 24 Hour Report.

When the SHVAF made an independent expenditure on Friday, October 22nd, I realized that a report needed to be filed with your office promptly. On that Friday afternoon, just before leaving my office for the weekend, I filed the attached report entitled 24 Hour Report of Contribution and Expenditures. In that report I disclosed the October 22nd expenditure of \$567 for the purchase of a political advertisement in The Forecaster.


On Monday morning, October 25th, my assistant contacted your office to confirm that I had filed the correct report and we were advised that I had filed the incorrect report. I should have filed an Independent Expenditure Report, not a 24 Hour Report of Contributions and Expenditures. To correct this oversight, I immediately filed the attached report on Monday, October 25th.

Because of my lack of experience with these matters; the timing of the October 23/24 weekend when both your office and my office were closed which resulted in the two day delay in filing the correct form; and the understandable confusion between the Commission's "24 Hour Report of Contributions and Expenditures" (the wrong report) and the Commission's "Independent Expenditure Report – 2010 General Election" (the correct report), I do not think Stop Handgun Violence Action Fund should be required to pay the penalty.

Cindy Sullivan
November 4, 2010
Page 2

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, reading "William S. Harwood".

William S. Harwood
Treasurer, Stop Handgun Violence Action Fund

WSH/lgn
Enclosure
3073306_2.DOC



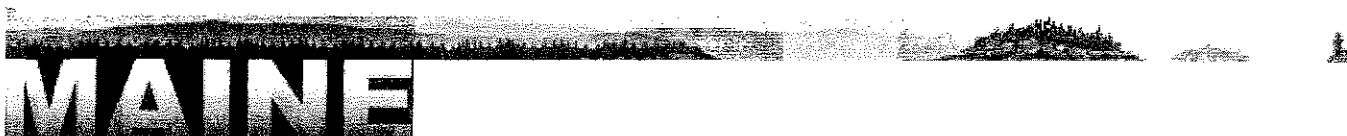
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine

Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES **2010 CAMPAIGN YEAR**

POLITICAL ACTION COMMITTEE	
STOP HANDGUN VIOLENCE ACTION FUND P.O. BOX 7734 PORTLAND, ME 04112	Telephone number (207)846-4843
TREASURER	
WILLIAM S. HARWOOD 66 EAST ELM STREET YARMOUTH, ME 04096	Telephone number (207)846-4843
EXPENDITURE AND PAYEE INFORMATION	
THE FORECASTER 5 FUNDY ROAD FALMOUTH, ME 04105	Date of expenditure 10/22/2010
Purpose of expenditure PURCHASE OF ADVERTISING SPACE	Amount of expenditure \$567.00
CERTIFICATION	
BY SUBMITTING THIS REPORT ON BEHALF OF STOP HANDGUN VIOLENCE ACTION FUND, I, , CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.	

UNSWORN FALSIFICATION IS A CLASS D CRIME (17-A M.R.S.A. § 453).



Welcome to the Campaign Finance Electronic Filing System Site

FILED REPORT RECEIPT

PAC NAME: Stop Handgun Violence Action
Fund

USER CODE: PAC1104

E-MAIL ADDRESS: wharwood@verrilldana.com

REPORT TITLE: 24-Hour Reports

FILED DATE: 10/22/10, 2:45 p.m. EST



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine

Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

INDEPENDENT EXPENDITURE REPORT – 2010 GENERAL ELECTION

Name of Person/Committee Making Expenditure(s) STOP HANDGUN VIOLENCE ACTION FUND

Mailing Address P.O. BOX 7734

City, Zip Code PORTLAND, ME 04112

Telephone 207-846-4843

The requirement to file an independent expenditure report is based on the total or aggregate amount spent per candidate for the election. When the total expenditures per candidate exceeds the threshold amount, a report must be filed by the appropriate deadline.

Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules.

Reports must be filed on weekends and holidays if that is when they are due by faxing the report to the Commission (287-6775). The Commission must receive the signed original report within 5 days after the fax was received.

Is this an amendment to a previously filed report? ☐ Yes ☒ No Date report was filed: _____

TOTAL INDEPENDENT EXPENDITURES OVER \$250 PER CANDIDATE

MADE BEFORE SEPTEMBER 7, 2010:

<input type="checkbox"/> September Summary Report	Expenditures through September 6	Due by 5:00 p.m. on September 7
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MADE ON OR AFTER SEPTEMBER 7 THROUGH OCTOBER 19, 2010:

<input type="checkbox"/> 48-Hour Report	Within 48 hours of exceeding \$250
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TOTAL INDEPENDENT EXPENDITURES OVER \$100 PER CANDIDATE BUT NOT MORE THAN \$250

MADE BEFORE OCTOBER 20, 2010:

<input type="checkbox"/> October Summary Report	Expenditures through September 30	Due by 5:00 p.m. on October 12
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<input type="checkbox"/> 14-Day Pre-Election Report	Expenditures through October 19	Due by 5:00 p.m. on October 19
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TOTAL INDEPENDENT EXPENDITURES OVER \$100 PER CANDIDATE WITHIN 13 DAYS BEFORE THE ELECTION

MADE ON OR AFTER OCTOBER 20 THROUGH NOVEMBER 2, 2010:

<input checked="" type="checkbox"/> 24-Hour Report	Within 24 hours of exceeding \$100
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I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

William L. Howard

Signature of PAC or Party Treasurer, or
Other Authorized Person Making Expenditure(s)

10/25/10
Date



INDEPENDENT EXPENDITURE REPORT – 2010 GENERAL ELECTION

AFFIDAVIT

STATE OF MAINE

COUNTY OF CUMBERLAND

I, WILLIAM S. HARWOOD, being duly sworn, attest that I made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidates named in the report or the authorized committees or agents of the candidates.

Signature of Affiant

Sworn to before me, this 25th day of October 2010

(Notary Public/Attorney at Law)

My commission expires: _____

LESLIE NORTON
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES JULY 15, 2012

Schedule B-IE-1

CANDIDATE(S) SUPPORTED/OPPOSED

- Please list all candidates that were the subjects of independent expenditures.
- If more than one candidate was the subject of the expenditure, allocate the expenditure among the candidates.

Office sought by candidate (including district # or county)	Candidate's name	Indicate whether expenditure was made in support of or in opposition to the candidate	Amount expended this reporting period for each candidate
Senator #11 Cumberland	Jerry Davis	Opposition	\$567.00
Total expenditures for all candidates this reporting period. <i>This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C. ⇒</i>			\$567.00

Schedule B-IE-2

PAYMENTS AND OBLIGATIONS

- Please indicate the date, payee, expenditure type, and amount of each expenditure.
- If you are reporting an agreement or obligation to make a future payment, please check (✓) the box next to the expenditure type.

Expenditure Types

LIT	Printing and graphics (flyers, signs, palmcards, etc.)	PRT	Print media ads only (newspapers, magazines)
MHS	Mail house (all services purchased)	RAD	Radio ads, production costs
PHO	Phone banks, automated telephone calls	TVN	TV or cable ads, production costs
POL	Polling and research survey	WEB	Website design, registration, hosting, maintenance, etc.
POS	Postage for U.S. Mail and mail box fees	OTH	Other (include description)

Date of expenditure	Payee, address, zip code	Expenditure type	✓	Amount
10/22/2010	The Forecaster, 5 Fundy Road, Falmouth, ME 04105	PRT		\$567.00
A. Expenditures for this page ⇒				\$567.00
B. Total for all other Schedule B-IE-2 pages (if any) ⇒				
C. Total independent expenditures for this reporting period (A+B). <i>This amount should equal the total amount for all candidates listed on Schedule B-IE-1.</i> ⇒				\$567.00



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

November 12, 2010

Mr. William Harwood
Stop Hand Gun Violence Action Fund
PO Box 7734
Portland, ME 04112

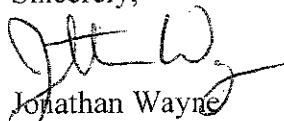
Dear Mr. Harwood:

Thank you for requesting a waiver of a late-filing penalty. Your request will be considered by the members of the Ethics Commission at their next meeting on Tuesday, November 30, 2010 at 11:00 a.m. The meeting will be held at our office at 45 Memorial Circle, 2nd floor, Augusta, Maine. You are welcome to attend the meeting in support of your request, but that is not required.

Next week, I will discuss your request with my colleagues and will write up a short memo for the Commissioners that will include a recommendation on behalf of the Commission staff. All of the materials relating to your request will be mailed to the Commissioners on November 22. That day, the agenda and materials will be posted on the Commission's website, www.maine.gov/ethics.

If you have any questions, please call me at 287-4179.

Sincerely,


Jonathan Wayne
Executive Director

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